IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18040 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYKUMAR RAJAN, KN NAYAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18040 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

Ms Mita Panchal, AGP for respondents

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 30.9.2003 passed by respondent No. 2 under section 3(2) of the Gujarat

Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner.

2. On going through the detention order dated 30.9.2003 placed at page no.14, it is found that the petitioner was involved in offences punishable under sections 66 and 65 of the Bombay Prohibition Act. It was registered before Palanpur Prohibition police station C.R. No.885/2003 on 18.8.2003. On the strength of the above prohibition offence the petitioner was found to be bootlegger and therefore he was detained.

3. The petitioner has contended that he is not a bootlegger and his alleged activities did not amount to a threat to public order or public health. That the order of detention has been passed after a lapse of long time and, therefore, the order of detention stands vitiated on the ground of delay. That therefore, the order of detention is illegal and deserves to be set aside.

4. On receipt of the petition, rule was issued and Ms. Mita Panchal, learned AGP appeared for the respondents. I have heard the learned Advocates for the parties and perused the papers.

5. Learned Advocate for the petitioner has contended that the detention order has been passed against the petitioner on a solitary offence registered on 18.8.2003 against the detenu referred to hereinabove. There is no dispute about the same. He further contends that though the offence was registered on 18.8.2003 and though no other offence has been registered against the petitioner and though no other statement of witness has been recorded, the order of detention has been passed as back as on 30.9.2003 and, therefore, there is a delay of more than one and half months in passing the order of detention. He has also contended that the said delay has not been explained .

6. On going through the record, it is clear that there is a delay of one and half months in passing the order of detention after registration of the offence as aforesaid. The records do not reveal any explanation for the delay caused in passing the above order of detention. In view of the above delay, it can be gathered that there was no immediate need to pass the order of detention and, therefore, the order suffers from the vice of delay and, therefore, it cannot be sustained in the eye of law.

7. For the foregoing reasons, this petition is allowed. The impugned order dated 30.9.2003 passed by respondent No.2 in exercise of powers under section 3(2) of the PASA Act detaining the present petitioner, is ordered to be set aside. The detenu is ordered to be set at liberty forwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]